IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5160 OF 2004

Shri.J.S.Bhat and Ors. ..Applicants

Vs.

Shri.Satish P.Dholakia
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicants
Mr.M.S.Mhambaray,A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.5048 OF 2004

Shri.J.S.Bhat and Ors. ..Applicants

Vs.

Smt.Sangeeta Shetye and
Ors. ..Respondents

...

Mr.J.S.Bhat in Person present for applicants
Mr.Y.S.Shinde,A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.5049 OF 2004

Shri.J.S.Bhat ..Applicant

Vs.

Shri.Vijaykumar Choudhari
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicant

Mr.Y.S.Shinde,A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.5159 OF 2004

Shri.J.S.Bhat and Ors. ..Applicants

Vs.

Shri.Satish P.Dholakia
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicants
Mr.Y.S.Shinde,A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.5161 OF 2004

Shri.J.S.Bhat and Ors. ..Applicants

Vs.

Shri.Satish P.Dholakia
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicants
Mr.Y.S.Shinde,A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.5162 OF 2004

Shri.J.S.Bhat and Ors. ..Applicants

Vs.

Shri.Smt.Shobhana Dholakia
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicants
Mr.Y.S.Shinde,A.P.P. for the State

...

WITH
CRIMINAL APPLICATION NO.5253 OF 2004

Shri.J.S.Bhat ..Applicant

Vs.

Shri.Hemchandra M.Kantak
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicant
Mr.Y.S.Shinde,A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 18,2005

P.C.

1. Heard Mr.J.S.Bhat in person for the applicants and the learned A.P.P. for the State.

2. The applicants are seeking quashing of process issued by the learned Ad.C.M.M., 24th Court, Borivali Mumbai in C.C.No.220/S/2000, by the Chief Court, Thane in C.C.No.260 of 2000, by the learned M.M., 38th Court at Ballard Pier, Mumbai in C.C.No.370072 of 2004, by the learned M.M. 24th Court Borivali, Mumbai in C.C.No.143/S/2000, by the learned M.M. 24th Court Borivali, Mumbai in

C.C.No.230/S/2000, Ad.C.M.M. 24th Court, Borivali, Mumbai in C.C.No.221/S/2000, by the learned M.M. 26th Court, in C.C.No.408/S/2002. In the said cases process is issued under Section 138 of Negotiable Instruments Act. The applicants have preferred applications before the learned Magistrate. The learned Magistrate rejected the said applications. Now in view of the observations of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal; [2004(4) Mh.L.J.274],** it is clear that the Magistrate has no power to recall the process issued by him. Hence, I am not inclined to interfere with the order of the learned Magistrate rejecting the applications for recall of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned

Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court. The applicant makes a statement that the necessary revision will be preferred within four weeks from today. In view of the statement, the trial Court shall not proceed with the trial for a period of four weeks.

5. It is made clear that revision will be preferred in respect of the order of the Magistrate issuing process against the applicants and not in respect of the order of the Magistrate rejecting the applications for recall of the process.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Criminal Applications are disposed of.

[V.K.TAHILRAMANI,J.]